IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.8093 OF 2005

The State of Maharashtra Petitioner

versus

Narendra Ghanshyamdas Goal Respondent

Shri R.Y.Mirza - APP for State.

Shri Shirish Gupte, Sr.Counsel with P.R.Dave and Sachin Dalvi for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 15th December 2005

PC :

1. The applicant State, at the instance of DCB, CID, Unit-II, Sat Rasta, Mumbai has filed the instant application under section 439(2) of the Code of Criminal Procedure, 1973 R/W Section 482 thereof, praying for cancellation of bail granted to respondent, who is accused no.4, in CR No.6/2004.

2. The respondent herein had filed Bail Application No.2536 of 2005 before the Sessions Court, Mumbai praying for his release on bail.

The respondent was arrested on 1st October 2005. It appears that he had filed an application for bail which came to be dismissed in default. He, therefore, approached this Court for bail but the said application was withdrawn with liberty to file a fresh bail application before Sessions Court. It is this bail application which is allowed by the Sessions Judge on 8th December 2005.

3. It is not necessary to narrate the entire prosecution case because the submission of Shri Mirza appearing for the applicant-State is that the learned Sessions Judge was in error in releasing the respondent on bail when investigation is in progress. He contends that the statement of one Pradip Parab, who is co-accused, was recorded on 27th September 2005. The accused was arrested on 1st October 2005. He applied for bail when investigations are in progress. The learned Sessions Judge was in error in releasing the applicant on bail when the offence with which the respondent as well as other accused are charged, are serious and grave in nature. The CR is registered for offences punishable under sections 302, 397, 452, 39 R/W 120-B of the Penal Code. Shri Mirza submits that

the deceased was brutally murdered at the residential flat of her brother who is the complainant. While it is true that the brothers and sisters of Agrawal Family are locked in litigation and a civil suit is pending, yet, the materials produced indicate that the present respondent was also involved in the killing of the deceased. It is he who brought other accused to the flat at Sudhakar Building on Narayan Dabholkar Road/ Napean Sea Road at which place the deceased was residing on the relevant date. The deceased was a Canadian Citizen and was to fly abroad on the next day. After dinner at her brother's (complainant's) place, she slept for the night at about 10.00 p.m. but was found killed in the morning of 23rd August 2003. Very valuable articles worth Rs.1.20 lakh were missing. The respondent brought the co-accused by his vehicle from a place at Bhuleshwar and it is he who led them to the flat. The complainant was his father in law. The complainant subsequently came to be arrayed as an accused. However, the complainant has expired and the respondent has been implicated pursuant to further materials collected and investigation is in progress. This is not a stage when the respondent could have been enlarged on bail.

4. On the other hand, Shri Gupte - learned senior counsel appearing for the respondent submits that the respondent has been implicated in the crime when investigations have been taken over by the DCB, CID (Crime Branch). However, the materials collected till date are nothing but an alleged confessional statement of a co-accused. The said statement was recorded when the co-accused was enlarged on bail by the Sessions Court. The statement of co-accused has been recorded after more than two years of the date of alleged incident. Shri Gupte submits that on such weak piece of evidence, without any corroborating materials, even prima facie case is not made out against the respondent. The Sessions Judge was right in observing that nothing incriminating has been found at the instance of the respondent-accused herein. There are no recoveries. All that is seized is a vehicle which was allegedly used for transporting other accused to the residence of the complainant. That apart, Shri Gupte submits that the learned Sessions Judge was convinced with the material produced by the respondent regarding his absence on the relevant date. On the relevant date the respondent-accused was in Delhi and in

fact attended the Court of Metropolitan Magistrate at Delhi where he was summoned to answer charge in a complaint under section 138 of the Negotiable Instruments Act. The accused is a frequent flyer. Therefore, Indian Airlines allowed him to avail a facility under which such flyer could book a ticket at reduced fair, a month in advance. That is why the ticket was booked on 26th July 2003. If there was any motive, or a plan hatched allegedly to eliminate the deceased, there was no reason why the respondent would book a ticket in his name availing of the said facility. Further, materials have been produced of the respondent actually visiting Delhi and in that behalf the extract of the conversation from the mobile phone used for the purposes of communicating with the relations of the respondent in Mumbai are produced. These, prima facie, materials have been relied upon. Shri Gupte submits that this is not an appeal against the order passed by learned Additional Sessions Judge. No case of what so ever nature is made out for cancellation of bail. Moreso, when apart from a complaint u/s 138 pending against the respondent, there are no criminal antecedents. The respondent has deep roots in the society. He is an Income Tax Payer.

He has his business and residential premises in Mumbai. There is no apprehension that he would abscond and would not be available at the trial. Stringent conditions having been imposed by the Trial Court, this is not a fit case for interference by this Court.

5. With the assistance of Shri Mirza and Shri Gupte I have perused the statement of the co-accused. The learned Sessions Judge was right in observing that the incident took place in the night of 21st-22nd August 2003. Initially the local Police Station (Malabar Hill Police Station) was investigating into the crime. Subsequently, investigations were handed over to the Crime Branch. That was in the month of 28th January 2004. The confessional statement is recorded on 27th September 2005. The co-accused was released on bail by the learned Sessions Judge on 21st December 2003. He did not avail of bail initially. The investigations were taken over by the Crime Branch on 28th January 2004. Yet, the confessional statement was recorded on 27th September 2005. More than two years having been elapsed from the incident and the accused no.4 (respondent) being in custody from 1st October 2005, in my view, the learned Judge was

in no error in enlarging the applicant before him on bail.

6. It is true that the investigating agency may have its own reasons for not recording the statement of co-accused. However, reliability of such evidence and its credibility is well settled. It is not as if in all cases on the testimony of this statement alone, the charge or guilt could be brought home. It may be that in a given case, after investigations are complete corroborating materials could be placed on record. However, the respondent-accused no.4 is not a person directly involved in the property litigation. The litigation was between the complainant, his brothers, one of whom is residing abroad, and his sisters, which include the deceased. The complainant’s daughter is married to this accused. During the life time of the complainant and the others, prima facie, there does not appear to be a direct benefit to the son in law-accused no.4. The further role which is attributed to the respondent-accused, is not of actual participation in the incident but having conspired with the others in carrying out the act. There also, what is attributed to the applicant-accused is a limited role of carrying

the other accused allegedly to the scene of offence. That originally the complainant was not suspected and later on he himself being arrayed as accused, the complexion more or less changed. The investigating agency does not state that anything was recovered at the instance of the respondent-accused. Further, materials have been produced, prima facie, to show that the accused at the relevant date was not in Mumbai. That his presence is marked by the Metropolitan Magistrate and the extract of Roznama is produced, is something which cannot be brushed aside. Further, the absence of antecedents in case of a 55 years old person who has deep roots in the society and upon whom stringent conditions have been imposed, means he deserves enlargement on bail.

7. The submissions of Shri Gupte about the co-accused being permitted to avail of bail despite confessing to the crime are also well founded. The respondent cannot be denied such treatment. More so, considering his role in the crime.

8. Upon perusing the impugned order and applying the settled principles regarding cancellation of

bail as also in my inherent jurisdiction, I find that the learned Judge has not misdirected himself in law nor discretion exercised by him can be said to be so palpably illegal or erroneous so as to call for any interference. Thus, not just by applying the principles necessary for scrutinising an application for cancellation of bail but even testing the order in my inherent jurisdiction, it is not a case where this Court should interfere and set aside the impugned order.

9. The learned Sessions Judge has taken care to impose stringent conditions including not allowing the accused to leave the City of Mumbai, surrendering his pass port, reporting every day at the investigating agency’s office. It shows that the learned Judge has fully applied his mind and has applied principles which are germane for considering a bail application. It is clarified that all observations are prima facie and shall not influence the trial and final decision in any manner.

10. In these circumstances, application is dismissed.

(S.C.DHARMADHIKARI, J.)